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No. 05-1284

IN THE

Supreme Court of the United States

LISA WATSON, *ET AL.*,
Petitioners,

v.

PHILIP MORRIS COMPANIES, INC., *ET AL.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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BRIEF FOR *AMICUS CURIAE* THE WASHINGTON LEGAL FOUNDATION IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICUS CURIAE*

The Washington Legal Foundation ("WLF") is a non-profit, public-interest law and policy center based in Washington, D.C., with supporters in all 50 states.[1] WLF devotes a substantial portion of its resources to defending free enterprise principles, individual rights, a limited and accountable government, and the proper use of our state and federal judicial systems. To that end, WLF has appeared before this and other federal courts in cases raising issues of federal court jurisdiction and the removal of federal cases to state courts. *See, e.g., Kircher v. Putnam Funds Trust*, 126 S. Ct. 2145 (2006); *Marshall v. Marshall*, 547 U.S. 293 (2006). In addition, WLF's Legal Studies Division publishes legal policy papers on these topics. A WLF publication of particular relevance to this case is Katharine R. Latimer & Michael L. Junk, *Removing Lawsuits From State Court: The "Federal Officer" Option*, WLF Contemporary Legal Notes (Dec. 2006).

As recognized by the great majority of courts to consider the issue, Congress intended 28 U.S.C. § 1442(a)(1) (the "Federal Officer Statute") to permit removal from state to federal court of any case brought against federal officers or those acting under federal officers, without limitation. Accordingly, WLF files this brief in support of respondents to inform the Court about the historical application of the Federal Officer Statute to corporations acting under federal officers, and to urge the Court not to disturb the consensus of the lower courts that a private corporation today may avail itself of the Federal Officer Statute in those circumstances.

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[1] WLF hereby affirms that no counsel for either party authored any part of this brief, and that no person or entity other than *amicus curiae* and its counsel provided financial support for the preparation and submission of this brief. By blanket letters of consent filed with the Clerk of the Court, all parties have consented to the filing of this brief.

SUMMARY OF ARGUMENT

The "Federal Officer Statute," as amended in 1996, provides that a civil action commenced in state court against any officer of the United States or "*any person* acting under that officer" may be removed "to the district court of the United States for the district and division embracing the place wherein it is pending." 28 U.S.C. § 1442(a)(1) (emphasis added).

Amici curiae Public Citizen, Inc., *et al.* argue that no "non-human" entity other than the United States and its agencies may utilize the Federal Officer Statute. *See* Public Citizen Br. at 7-8 ("[T]he statutory language granting removal rights . . . does not reflect an intent to grant protection to corporations and other artificial entities."); *id.* at 10 ("Nothing . . . reflects a broader intent to alter, let alone expand, the definition of 'person' or to benefit non-human entities other than the United States and its agencies."). In essence, Public Citizen urges this Court to reach an issue never considered by the lower courts in this case,[2] to ignore

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[2] The parties and the courts below never questioned that a private corporation could avail itself of the protections of the Federal Officer Statute. *See* Pet. App. 16a (noting that the parties do not dispute that a corporation can be a "person" acting under a federal officer). Public Citizen's suggestion (*see* Public Citizen Br. at 6-7) that the Court must address this question before affirming the decision below is incorrect. *See Youakim v. Miller*, 425 U.S. 231, 234 (1976) (per curiam) ("It is this Court's practice to decline to review those issues neither pressed nor passed upon below."); *Davis v. United States*, 512 U.S. 452, 457 n* (1994) ("Although we will consider arguments raised only in an *amicus* brief, we are reluctant to do so when the issue is one of first impression involving the interpretation of a federal statute on which the [relevant federal department] expressly declines to take a position." (internal citation omitted)); *McCleskey v. Zant*, 499 U.S. 467, 523 n.10 (1991) ("It is well established . . . that this Court will not consider an argument advanced by *amicus* when that argument was not raised or passed on

(Footnote cont'd)

decades of jurisprudence, and then to hold that no private corporation – regardless of the circumstances – may ever invoke federal jurisdiction by way of the Federal Officer Statute. Neither law nor logic dictates such a result. WLF respectfully requests that the Court reject Public Citizen's invitation to impose such sweeping and unjustified limitations upon the protections granted by the Federal Officer Statute.

ARGUMENT

I. Corporations Historically Have Availed Themselves Of The Federal Officer Statute.

Public Citizen begins its argument from the premise that "the principle purpose of the removal statute was to protect *individual* federal officers, employees, and agents." Public Citizen Br. at 6. From there, however, Public Citizen broadly and incorrectly states that "[t]he statute's history provides *no support* for the notion that it was intended to protect private corporations." *Id.* at 4 (emphasis added).

Although it may be true that the impetus behind the original Federal Officer Statute was the protection of the rights of individual federal officers, it is untrue that the predecessors to today's Federal Officer Statute served only individuals to the exclusion of private corporations. In *Ward v. Congress Constr. Co.*, 99 F. 598 (7th Cir. 1900), a decision handed down more than a century ago, the Seventh Circuit held that a private construction company was entitled to remove a claim to federal court under the then-existing terms of the Federal Officer Statute. Like today's Federal Officer Statute, the one before the Seventh Circuit in *Ward*

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below and was not advanced in this Court by the party on whose behalf the argument is being raised.").

did not grant the right of removal to corporations by explicit statutory inclusion. Instead, it allowed removal in claims brought against "any officer appointed under or acting by authority of any revenue law of the United States . . . or any *person* acting under or by authority of any such officer." *Id.* at 604 (emphasis added). Even so, in reaching its decision, the Seventh Circuit apparently never doubted that the private corporation in *Ward* could benefit from the removal provisions found in that early Federal Officer Statute.

Other examples may be found, but this one suffices to refute Public Citizen's broad-brush attempt to re-paint the traditional application of the Federal Officer Statutes in order to circumscribe the application of the modern-day statute at issue in this proceeding. For it is clear that private, corporate entities – and not just individuals – historically availed themselves of the protections afforded by the Federal Officer Statute.[3] Certainly this fact could not have escaped the attention of Congress, which has revised the Federal Officer Statute several times throughout the statute's existence in various forms over more than 100 years.

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[3] Petitioners concede that private corporations historically have "avail[ed] themselves" of the federal officer removal statute. *See* Br. for Pet. at 32 ("Some federal courts have held that – unlike private regulated parties – government contractors, in certain circumstances, may avail themselves of the federal officer removal statute." (internal citation omitted) (citing *Ward*, 99 F. 598)).

II. The Overwhelming Majority Of Modern Courts Have Rejected The Arguments Raised By Public Citizen, Holding That Private Corporations Are Indeed "Persons" Within The Meaning Of The Federal Office Removal Statute.

Since the Supreme Court's decision solidifying the government-contractor defense in *Boyle v. United Technologies Corp.*, 487 U.S. 500 (1988), corporate defendants have more often invoked the removal privileges of the Federal Officer Statute. Public Citizen concedes, as it must, that only a handful of modern district court decisions stand for the proposition that a private corporation cannot qualify as a "person" under the terms of the statute. *See* Public Citizen Br. at 6 (noting that "several federal courts have concluded that the statute only applies to natural persons").[4]

The handful of cases cited by Public Citizen were all decided prior to the most recent amendments to 28 U.S.C. §

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[4] Public Citizen cites the following cases: (1) *Krangel v. Crown*, 791 F. Supp. 1436 (S.D. Cal. 1992); (2) *C.H. v. Am. Red Cross*, 684 F. Supp. 1018 (E.D. Mo. 1987); (3) *Roche v. American Red Cross*, 680 F. Supp. 449 (D. Mass. 1988); and (4) *Gensplit Fin. Corp. v. Foreign Credit Ins. Ass'n*, 616 F. Supp. 1504 (E.D. Wis. 1985). *See* Public Citizen Br. at 6. *Krangel v. Crown* provides no authority for the proposition that a private corporation can never qualify as a "person" under the current Federal Officer Statute. Even assuming for the sake of argument that the *Krangel* court properly construed the 1948 version of the Federal Officer Statute at issue in that case, the *Krangel* holding is beside the point, because the 1996 revision of the Federal Officer Statute is at issue here. *See* Section V, *infra*. And, as noted by the district court in *Krangel*, *Roche*, *Gensplit*, and *C.H.* all involved the issue of agency removal; therefore "[n]one of these decisions precisely addresses whether a private corporation is a 'person' under the provision." 791 F. Supp. at 1445.

1442(a)(1)[5] and stand against a veritable tide of contrary authority. No federal circuit court has ever endorsed the view that a corporation may never invoke the Federal Officer Statute. To the contrary, at least the First, Fifth, and Tenth Circuits have held that private corporations can qualify as "persons" acting under a federal officer for purposes of Section 1442(a)(1).[6] In the last ten years, every federal district court squarely to address the issue has likewise held that a private corporation can be a "person" within the meaning of the Federal Officer Statute. In reaching this conclusion, numerous courts have rejected the very same arguments proffered by Public Citizen here.[7] In the instant case,

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[5] *See* Section V, *infra*.

[6] *See Camacho v. Autoridad de Telefonos de Puerto Rico*, 868 F.2d 482, 468 (1st Cir. 1989) (finding that telephone companies acting under a federal officer could utilize the Federal Officer Statute, and implicitly holding that those companies were "persons" within the terms of the statute); *Winters v. Diamond Shamrock Chem. Co.*, 149 F.3d 387, 398 (5th Cir. 1998) ("[C]orporate entities qualify as 'persons' under § 1442(a)(1)."), *cert. denied*, 526 U.S. 1034 (1999); *Greene v. Citigroup, Inc.*, 215 F.3d 1336 (Table), 2000 WL 647190, at *2 (10th Cir. 2000) ("A private corporation may remove a case under § 1442(a)(1).").

[7] *See, e.g., Ferguson v. Lorillard Tobacco Co.*, No. 1:06CV100006, 2007 WL 539279, at *3 (N.D. Ohio Feb. 15, 2007) (noting that "the overwhelming weight of recent judicial authority supports the view that corporations qualify as 'persons' under the Federal Officer Statute" (citation omitted)); *Alsup v. 3-Day Blinds, Inc.*, 435 F. Supp. 2d 838, 845 n.3 (S.D. Ill. 2006) ("[T]he Court agrees with the weight of authority holding that corporations are persons for purposes of federal officer removal."); *Davidson v. Arch Chems. Specialty Prods., Inc.*, 347 F. Supp. 2d 938, 941 (D. Or. 2004) ("A corporation can be a 'person' for purposes of § 1442(a)(1)."); *Paldrmic v. Altria Corp. Servs., Inc.*, 327 F. Supp. 2d 959, 965 (E.D. Wis. 2004) (disapproving contrary holding by sister court in *Gensplit Fin. Corp. v. Foreign Credit Ins. Ass'n*, 616 F. Supp. 1504 (E.D. Wis. 1985)); *In re Agent Orange Prod. Liab. Litig.*, 304 F. Supp. 2d 442, 447 (E.D.N.Y. 2004) ("Under section

(Footnote cont'd)

none of the real parties in interest disputes that a corporation can be a "person" under the statute. *See* Pet. App. 16a (Eighth Circuit noting that the parties do not dispute that a corporation can be a "person" acting under a federal officer). Even the United States apparently does not dispute that private corporations are "persons" for purposes of the Federal Officer Statute. *See* Br. for the U.S. at 24-25 (relying on cases in which courts applied the Federal Officer Statute to private companies such as telephone companies and banks that "assist[] a federal officer in performing the officer's duties").

Although the numerous lower court decisions noted above – like the concessions of the parties – are not binding on this Court, the near unanimity of the lower courts in holding that corporations are "persons" for purposes of the Federal Officer Statute is

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1442(a)(1) a 'person' includes a corporation."); *Virden v. Altria Group, Inc.*, 304 F. Supp. 2d 832, 844 (N.D. W. Va. 2004) ("The majority of courts construing the removal statute . . . have disagreed with the holding in the *Krangel* case and have applied the federal officer removal statute to corporations. . . . Furthermore, courts adopting the majority position have found that including corporations within the definition of 'persons' is consistent with the statutory goal of the federal officer removal statute to prevent state suits from inhibiting federal policy. The majority rule, both as a matter of statutory construction and policy, is persuasive, and the Court concludes that the defendant corporations are 'persons' under 28 U.S.C. § 1442." (citations omitted)); *Arness v. Boeing N. Am., Inc.*, 997 F. Supp. 1268, 1271-72 (C.D. Cal. 1998) (disapproving contrary holding by sister court in *Krangel v. Crown*, 791 F. Supp. 1436 (S.D. Cal. 1992)); *Lopez v. Three Rivers Elec. Co-op.*, 166 F.R.D. 411 (E.D. Mo. 1996) (disapproving contrary holding by sister court in *C.H. v. American Red Cross*, 684 F. Supp. 1018 (E.D. Mo. 1987)); *Good v. Armstrong World Indus., Inc.*, 914 F. Supp. 1125, 1128 (E.D. Pa. 1996) ("I find that Westinghouse qualifies as a person within the meaning of the statute.").

persuasive authority for that proposition.[8] The lower court decisions are particularly persuasive here, where those decisions reflect a careful, reasoned analysis of the issue, worthy of this Court's deference. In *Ryan v. Dow Chem. Co*, 781 F. Supp. 934 (E.D.N.Y. 1992), for example, one of the first decisions to consider (and reject) each of the arguments urged here in support of the theory that corporations cannot be "persons" under the Federal Officer Statute, Judge Weinstein reasoned as follows:

> Determining in a vacuum what the term "person" is meant to encompass seems a fruitless exercise. The statute's use of the word could refer to either natural or legal persons. Legislative history is equally unilluminating. Although as a historical matter it seems plausible to believe that the drafters were concerned with protecting natural persons, there is almost no recorded history for the provision, and none to warrant reliance on such an intuition.
>
> Given the arid interpretive landscape, it would seem more productive to address a slightly different question, namely, what definition of person makes sense in light of the purpose of the section read as a whole. Thus recast, the issue is whether a purely legal person such as a corporation could be engaged in activities that amount to the implementation of a federal policy under the direction of a government officer in such a manner that state court suits

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[8] *Cf. United States v. Craft*, 535 U.S. 274, 300 (2002) (Thomas, J., Scalia, J., and Stevens, J., dissenting) (discussing import of consensus among lower federal courts and stating that "[w]hile the positions of the lower courts and the IRS do not bind this Court, one would be hard pressed to explain why the combined weight of these judicial and administrative sources . . . do not constitute relevant authority").

> against corporations arising out of those activities could be a direct interference with the implementation of federal law.
>
> It is not difficult to imagine such a circumstance.

Id. at 946.

III. Interpreting The Federal Officer Statute To Preclude Removal By Corporations Acting Under Federal Officers Would Both Contradict This Court's Mandate To Apply The Statute Expansively And Produce An Absurd Result.

By now, numerous courts across the country share Judge Weinstein's considered view that corporations may act as "persons" under the Federal Officer Statute.[9] The same logic and the same result should obtain here, for interpreting the word "person" in the Federal Officer Statute to exclude corporations would ignore the sound rationale expressed in the *Ryan* decision and lay down a rule that no corporation, no matter how connected to the federal government or its officers, may remove cases based upon the Federal Officer Statute. Such a holding would impose a sweeping limitation upon the Federal Officer Statute and produce an absurd result, all at the expense of substantial federal interests.

To deny corporations the benefit of Section 1442(a)(1) would be to ignore the reality that the federal government relies on corporations to carry out many of its functions and duties.[10] The

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[9] *See* n.6 and n.7, *supra*, and accompanying text.

[10] As described in the briefs for *Amici Curiae* Defense Contractors and Industry Associations and Blue Cross and Blue Shield Association, the federal government has long contracted with corporations for the provision of numerous products and services. Moreover, the lower courts have long permitted corporations serving in such roles to remove cases to federal court under Section 1442(a)(1).

(Footnote cont'd)

Federal Officer Statute is an essential component of this relationship, bridging the gap between the interests of the federal government and the corporations often charged with carrying out those interests. As the Ninth Circuit pointed out in *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1252 (9th Cir. 2006), "if the federal government can't guarantee its agents access to a federal forum if they are sued or prosecuted, it may have difficulty finding anyone to act on its behalf." For this reason, corporations are, and properly should be, viewed as "persons" under the Federal Officer Statute.

Furthermore, this Court and others have consistently favored a broad interpretation of Section 1442(a)(1) to ensure that all private entities acting pursuant to the federal government's directives are protected from potentially hostile state courts, and further to ensure that the government's interests are not frustrated by state policies inconsistent with federal objectives. *See, e.g., id.* at 1252 (noting the "clear command from both Congress and the Supreme Court that when federal officers and their agents are seeking a federal forum, [courts] are to interpret section 1442 broadly in favor of removal."); *Parks v. Guidant Corp.* 402 F. Supp. 2d 964, 967 (N.D. Ind. 2005) (noting that "[i]f federal officials could not remove such cases to federal court, states could effectively thwart federal action and disrupt the operation of the federal government" (citing *Willingham v. Morgan*, 395 U.S. 402, 406 (1969)).[11] To that end, common sense dictates that where

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See Br. for Def. Contractors and Indus. Ass'ns at 7 (noting that "lower courts are uniform in holding that defense contractors can avail themselves of Section 1442"); Br. for Blue Cross and Blue Shield Ass'n at 9-12 (discussing lower court consensus in allowing private entities right to remove under the Federal Officer Statute).

[11] *See also Jefferson County, Ala. v. Acker*, 527 U.S. 423, 431 (1999) (recognizing that "[i]n construing the colorable federal defense requirement [under Section 1442(a)(1)], we have rejected a 'narrow, grudging interpretation' of the statute . . . ."); *State of Colo. v. Symes*,

(Footnote cont'd)

federal officers themselves are granted access to federal courts by way of the Federal Officer Statute, the same privilege should be granted to the private corporations acting at their direction.

Ultimately, to accept that corporations are "persons" within the meaning of the Federal Officer Statute offends neither the language, nor the intent, nor the historical application of the statute. Instead, to allow corporations acting under federal officers the right to remove claims against them to federal court is consistent with the "broad" application of statute mandated by this

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286 U.S. 510, 517 (1932) (allowing prohibition agent to remove suit under Section 1442(a)(1) and stating "[i]t scarcely need be said that such [removal] measures are to be liberally construed to give full effect to the purposes for which they were enacted"); *Durham*, 445 F.3d at 1252 (this Court "has mandated a generous interpretation of the federal officer removal statute" so that "the policy favoring removal 'should not be frustrated by a narrow, grudging interpretation of § 1442(a)(1)." (citing *Arizona v. Manypenny*, 451 U.S. 232, 242 (1981) (quoting *Willingham*, 395 U.S. at 407))); *Winters*, 149 F.3d at 398 (acknowledging the "Supreme Court's admonishment that the statute's 'color of federal office' requirement is neither 'limited' nor 'narrow,' but should be afforded a broad reading so as not to frustrate the statute's underlying rationale"); *State of La. v. Sparks*, 978 F.2d 226, 232 (5th Cir. 1992) (noting that "the Supreme Court has for over two decades required a liberal interpretation of § 1442(a) in view of its chief purpose—to prevent federal officers who simply comply with a federal duty from being punished by a state court from doing so" and thereafter adopting "such a liberal interpretation in the instant case"); *In re MTBE Prods. Liab. Litig.*, 342 F. Supp. 2d 147, 154-55 (S.D.N.Y. 2004) (noting that "[a]lthough there is no precise standard for the extent of control necessary to bring an individual with[in] the 'acting under' clause [of Section 1442(a)(1)], a cursory survey of the application of [section 1442(a)(1] reveals it has been construed broadly, and its 'person acting under' provision particularly so" (citing *Gurda Farms, Inc. v. Monroe County Legal Assistance Corp.*, 358 F. Supp. 841, 844 (S.D.N.Y. 1973)).

Court's precedents as well as the indisputable fact that federal officers and agencies act not only through individuals but also through private corporations.

IV. This Court's Decision In *Primate Protection* Does Not Dictate That Private Corporations Cannot Be "Persons" Under The Current Federal Officer Statute.

Public Citizen points to this Court's decision in *International Primate Protection League v. Administrators of Tulane Educational Fund*, 500 U.S. 72 (1991) ("*Primate Protection*"), as if that decision somehow forecloses a determination that private corporations fall within the terms of the Federal Officer Statute. It does not.

Primate Protection does not address the specific question raised here by Public Citizen, *i.e.*, whether private corporations can be "persons" within the meaning of the Federal Officer Statute. Instead, the question confronted by the Court in *Primate Protection* was whether a plain reading of the prior Federal Officer Statute precluded removal by federal "agencies." *See id.* at 79 ("The question before us is whether this provision permits agencies to remove. [T]he starting point in every case involving construction of a statute is the language itself." (quotations and citation omitted)). In essence, the question in *Primate Protection* was a narrow one, readily answered by the unambiguous terms of the then-existing Federal Officer Statute. *See id.* ("We have little trouble concluding that the statutory language excludes agencies from the removal power.").[12] Thus, the Court's conclusion in

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[12] The Court's arguably narrow view of the term "person" in *Primate Protection* was also compelled by the Court's "reluctan[ce] to read 'person' to mean the sovereign," *Primate Protection*, 500 U.S. at 83, an additional consideration that does not limit the Court's interpretation of the same term in this instance.

Primate Protection that the language of the former Federal Officer Statute at one time excluded "agencies" from its provisions does not implicate – much less resolve – the question of whether corporations can or should be included as "persons" under the terms of the current statute. *See, e.g., Krangel*, 791 F. Supp. at 1444 (observing that this Court's decision in *Primate Protection* "was silent as to whether a corporation could remove under the statute"); *Ryan*, 781 F. Supp. at 946 ("The Court did not decide, however, whether a corporation could be a 'person acting under [an officer].'" (quoting *Bakalis v. Crossland Sav. Bank*, 781 F. Supp. 140, 142-43 (E.D.N.Y. 1991)).

V. The 1996 Amendments To The Federal Officer Statute, Viewed In Light Of The Pre-Existing Dictionary Act, Confirm That Corporations May Seek The Protections Of The Federal Officer Statute.

To the extent the *Primate Protection* decision has any relevance to the issues currently before the Court, that relevance stems from the impetus provided by that decision for the 1996 amendments to the Federal Officer Statute. With those amendments, Congress effectively overruled the narrow construction given the statute by the Court in *Primate Protection*, thus indicating an intent to bring all entities that act under federal officers within its terms. *See, e.g., In re Agent Orange Prod. Liab. Litig.*, 304 F. Supp. 2d at 447 ("Congress's amendment of the statute to emphasize its broad scope supports the conclusion that 'person' encompasses more than mere individuals. Protection of federal government operations in today's organizational climate where so much of our economy and government outsourcing depends upon corporations requires this result. Under section 1442(a)(1) a 'person' includes a corporation.").

The intent of Congress to include corporations as "persons" capable of acting under federal officers is implicit in the 1996 amendments, but nonetheless manifest. Chief among those is the fact that the 1996 amendments to the Federal Officer Statute were

accomplished at a time when the Dictionary Act unambiguously defined the term "person" to include corporations. *See* 1 U.S.C. § 1 ("In determining the meaning of any Act of Congress, unless the context indicates otherwise . . . the words 'person' and 'whoever' include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals."). Public Citizen argues that "the use of the term 'person' in the federal officer removal statute long predates the first enactment of the Dictionary Act in 1871 and [so the statute] could not possibly have been informed by the Act." Public Citizen Br. at 8, n.2. Although this may be true *chrono*logically, logically Public Citizen's argument misses the mark, for it ignores that the Dictionary Act has remained in place throughout the course of several amendments to the Federal Officer Statute, including the most recent amendment in 1996. Therefore, while the scope of the original statute may not have been informed by the Act itself, the same cannot be said for the subsequent amendments to the statute.[13] Including corporations within the scope of federal officer removal is consistent with the language of the statute as amended in 1996 and as interpreted in light of the pre-existing Dictionary Act. *See Vt. Agency of Natural Res. v. United States ex rel. Stevens*, 529 U.S. 765, 782-83 (2000) (reviewing text and history of False Claims Act and finding that its provisions apply to corporations, though not explicitly identified in the statute, "because the presumption with regard to corporations is . . . [that] they are presumptively covered by the term 'person.'" (citing 1 U.S.C. § 1)).

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[13] By its terms, the Dictionary Act supplements and defines each "Act of Congress." 1 U.S.C. § 1. An "Act of Congress" occurs both when a statute is enacted and when a statute is amended. *Cf. Harris v. Allstate Ins. Co.* 300 F.3d 1183, 1189-90 (10th Cir. 2002) (noting in an analogous context that an "Act of Congress" means either the enactment of a statute on "a never-before considered subject or [the] amend[ment of] a previously existing statute").

Ultimately, Public Citizen's reliance on *Primate Protection* is misplaced, and its argument concerning both the relevance of that case and the 1996 amendments to the Federal Officer Statute is a *non sequitur*. Although Public Citizen contends that Congress meant to exclude corporations as "persons" under the statute because its 1996 post-*Primate Protection* amendments did not explicitly bring corporations within the express terms of the statute (*see* Public Citizen Br. at 9-10), the opposite is true. Had Congress intended to exclude corporations from the purview of the Federal Officer Statute in 1996, it could and would have done so. *See Cannon v. Univ. of Chicago*, 441 U.S. 677, 698-99 (1979) ("[E]valuation of congressional action . . . must take into account its contemporary legal context").In light of the crucial role that corporations play in today's federal government, however, it is not surprising that Congress has not acted to bar corporations from invoking Section 1442(a)(1)'s removal provisions under the proper circumstances. Instead, it is telling that, despite multiple amendments to the Federal Officer Statute, Congress has never endorsed such a limitation.

CONCLUSION

For the foregoing reasons, WLF respectfully requests that the Court reject Public Citizen's invitation to impose sweeping and unjustified limitations upon the Federal Officer Statute that would bar corporations acting under federal officers from utilizing its removal provisions.

Respectfully submitted,

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